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Letter dated 26 January 2006 from the Permanent Mission of Poland to the United Nations addressed to the Chairman of the Committee

On behalf of the Government of the Republic of Poland and in response to the letter dated 15 November 2005, please find attached additional information and clarification on the Polish activities regarding the implementation of the Security Council resolution 1540 (2004) (see annex).

The information contains a broad explanation of the provisions introduced in the Polish legal system. The attached matrix specifies the Polish legal acts adopted in order to prevent the proliferation of weapons of mass destruction and to strengthen the export control system.

The Government of the Republic of Poland stands ready to provide further details and explanations as necessary.

I would be most grateful if this information could be included in the Committee report to the Security Council.

(*Signed*) Andrzej **Towpik**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

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Annex to the letter dated 26 January 2006 from the Permanent Mission of Poland to the United Nations addressed to the Chairman of the Committee

Additional details on the Polish activities regarding the implementation of the Security Council resolution 1540 (2004)

With reference to the indicated area of "national legislation or other legal measures Poland has implemented or intends to implement to prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use the nuclear, chemical and biological weapons and their means of delivery, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them", the Republic of Poland submits the following explanation as well as additional information:

a) The term "non-state actor" is not statutory in Polish law. For this reason neither Polish legislation, nor international agreements concluded by Poland, contain this term. Also mandatory regulations do not make direct reference to it. The purpose of mandatory regulations in internal law as well as in relevant international agreements is to protect nuclear installations, weapons of mass destruction and the means of delivery as well as to develop cooperation in the area of non-proliferation and export controls. They should also be interpreted as reference to potential threats resulting from the activity of so-called "non-state actors". It should be emphasized that a number of multilateral and bilateral agreements concluded by Poland concerns cooperation in the area of combating terrorism, thus a "non-state" actors;

b) A list of the most important multilateral agreements signed by Poland and covering the requested area:

1. Agreement between the Parties to the North Atlantic Treaty for co-operation regarding atomic information (1964);
2. Treaty on the Non-proliferation of nuclear weapons (1968);
3. Convention on the prohibition of the development, production and stockpiling of bacteriological (biological and toxin) weapons and on their destruction (1972);
4. Convention on the physical protection of nuclear material (1980 amended in 2005 - in the process of ratification);
5. Joint convention on the safety of spent fuel management and on the safety of radioactive waste management (1997),
6. International convention for the suppression of the financing of terrorism (1999),
7. European convention on the suppression of terrorism (1997),
8. Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (1993);
9. International convention for the suppression of terrorist bombings (1997).

Examples of the core bilateral agreements on this matter:

1. Agreement between the Government of the Republic of Poland and the Government of the Republic of India on Co-operation in Combating Organized Crime and International Terrorism (2003);
2. Agreement between the Government of the Republic of Poland and the Government of the Republic of Turkey on co-operation in combating terrorism, organized crime and other crimes (2003);
3. Agreement between the Government of the Republic of Poland and the Government of Romania on co-operation in combating terrorism, organized crime and other crimes (2001);
4. Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on early notification of the nuclear accidents, and on co-operation in the field of nuclear safety and radiation protection (1995);
5. Agreement between the Government of the Republic of Poland and the Government of Ukraine on early notification of nuclear accidents, on exchange of information and on co-operation in the field of nuclear safety and radiation protection (1993);
6. Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on destruction of chemical weapons (2002);
7. Agreement for co-operation between the Republic of Poland and the Unites States of America concerning peaceful use of nuclear energy (1991).

c) The supplementary information for the matrix (referring to the respective paragraphs of the 1540 Resolution):

Ad. OP 1 related matters from OP 5,OP6,OP8 (a), (b), (c) and OP 10:

7	Comprehensive Nuclear Test Ban Treaty (CTBT)	X	1.Signed 24.09.1996, Ratified 25.05.1999
8	Convention on Physical Protection of Nuclear Material (CPPNM)	X	1.Signed 06.08.1980, In force 08.02.1987 2.Amended 08.07.2005, Currently under ratification

Ad. OP 2 – Nuclear Weapons (NW):

			Enforcement: civil/criminal penalties and others
3	Posses	X	1.Penal Code of 6 June 1997, art. 121 (§1,2)
10	Assist in a.m. activities	X	1.Penal Code of 6 June 1997, art. 18 (§ 3)
12	A.m. activities related to means of delivery	X	1.Penal Code of 6 June 1997, art. 121 (§1, 2)

Ad. OP 3 (a) and (b) – Account for /Secure/Physically protect NW including Related Materials

			National legal framework
1.	Measures to account for production	X	1. Act of Nuclear Law of 29 November 2000 2. Regulation of Council of Ministers of 27 April 2004 on Nuclear Material Safeguards 3. Parliamentary amendments to the Act of Nuclear Law
2.	Measures to account for use	X	
3.	Measures to account for storage	X	
4.	Measures to account for transport	X	1. Regulation of Council of Ministers of 27 April 2004 on Nuclear Material Safeguards 2. Parliamentary amendments to the Act of Nuclear Law
5.	Other measures for accounting	X	1.Council Directive 2003/122/Euratom 2.Directive 96/29/Euratom 3.Parliamentary amendments to the Act of Nuclear Law
6.	Measures to secure production	X	1.Act of Nuclear Law of 29 November 2000 2.Parliamentary amendments to the Act of Nuclear Law, Chapter V 3.Regulation of Council of Ministers of 31 July 2004 on Physical Protection of Nuclear Materials
7.	Measures to secure use	X	
8.	Measures to secure storage	X	
15.	National regulatory authority	X	The President of National Atomic Energy Agency
16.	IAEA Safeguards Agreements	X	1.Safeguards Agreement in force since 11 October 1972 2.Additional Protocol in force since 5 May 2000 3.New Safeguard Agreement- under ratification 4.New Additional Protocol- under ratification

Ad. OP 3 (c) and (d) and related matters from OP 6. and OP 10 – Controls of NW including Related Materials

21.	**Trans-shipment control**	X	1.Parliamentary amendments to the Act of Nuclear Law, Chapter V
22.	**Re-export control**	X	1.Parliamentary amendments to the Act of Nuclear Law, Chapter V

Ad. OP 6, 7 and 8 (d) – Control lists, Assistance, Information

5.	**Assistance in place (bilateral/ multilateral)**	X	1.G8-Global Partnership: cooperation in the field of CW destruction 2. Global Threat Reduction Initiative – nuclear reactor conversion program

With reference to requested information on "laws and regulations as well as law enforcement efforts Poland has taken or intends to take:

- to maintain appropriate national measures to account for and physically protect nuclear, chemical, biological weapons and their means of delivery, including related materials,
- to review national export and trans-shipment controls, including appropriate penalties for violations of such controls, over nuclear, chemical, biological weapons, and their means of delivery, including related materials",

but also extending the aforementioned explanation with regard to the term of "non-state actor", attached is supplementary information on Polish export control regulations.

In Poland there is one basic national act which regulates all issues related to export control both in terms of different activities and different products. It is the Law of 29 November 2000 *on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security* which was amended on July 2, 2004 in the connection with Poland's accession to the EU. The consolidated text of the Law was published in the Journal of Laws No 229 of 21 October 2004.

The scope of Law covers: export, brokering services, technical assistance, import and transit of dual use and military goods. As far as import of dual use goods is concerned, the monitoring being used in telecommunication and information security was introduced due to national security reasons.

The control list of dual use goods is included in the Council Regulation No 1504/2004 which is directly binding in the Polish legal system. This list covers all items referring to nuclear and biological weapons and their means of delivery controlled by the international export control regimes and relevant international conventions. The control list of military goods based on EU Code of Conduct on arms export is included in the Ordinance by the Minister of Economy and Labour of 28 September 2004 on the list of military goods.

The basic rule of our a/m legislation is that foreign trade in goods, technologies and services of strategic importance is forbidden by law unless relevant conditions and restrictions set forth in Council Regulation (EC) No 1334/2000, in the Law of 2000, in other Laws, as well as in agreements and other international commitments are met. Thus the authorization for export is a privilege granted to an entrepreneur which can be cancelled or withdrawn. Authorizations are granted only to the certified companies that have implemented Internal Control Program (ICP) complying with the ISO 9000 standards.

Under the Law of 29 November 2000 trade in dual use items may be carried out based on export or transit authorization, an authorization to provide brokering services or technical assistance. Trade in military goods may be only carried out based on an export, import or transit authorization, an authorization to provide brokering services or technical assistance.

All authorizations, except for authorizations for transit of dual use goods, are issued by the Ministry of Economy. Authorizations for transit of dual use goods are issued by the Custom Services.

According to Polish legislation any person pursuing foreign trade without a relevant authorization or contrary to condition set out in the authorization (however unintentionally) will be punished by imprisonment for a term from 1 to 10 years. Any legal person carrying out trade without a valid authorization is liable to a fine up to PLN 200.000 imposed by the trade control authority by a relevant administrative decision. Any natural or legal person importing dual use items without submitting a notification of intended import to the import monitoring authority shall be liable to a fine of up to PLN 100.000 imposed by the trade control authority by a relevant administrative decision.

Under article 9 of the Law of 29 November 2000 individual or global authorizations shall be issued following an application by any natural or legal person, specifying:

1) the name of the natural or legal person, their registered office and address;

2) the number of entry in the Register of Entrepreneurs as defined in the National Court Register Act of 20 August 1997 (Journal of Laws of 2001, No 17, item 209, as amended;

3) the type and scope of business activity carried out by the natural or legal person;

4) the exporter's or importer's name, their registered office and address;

5) the name of the producer and end user, their registered offices and addresses;

6) types of items of strategic importance, brokering services or technical assistance to be traded with foreign partners, their description, value and quantity;

7) the intended use of items of strategic importance by the end user;

8) a country of final destination;

9) a statement of the natural or legal person with a commitment to take any action necessary to deliver items declared in the application to the end user, and to inform a foreign importer that any change of declared end-use of these items or any change of their end user requires a prior approval of the Polish trade control authority.

The following documents should be attached by the natural or legal person to the application for an individual or global authorization for the trade in items of strategic importance:

1) a statement confirming that there are no circumstances referred to in Article 10 - specified in the paragraph below;

2) a copy of the concession to carry out trade in explosives, weapons and ammunition, as well as products and technologies to be used for the military or police purposes, as defined in the Law of 22 June 2001 laying down the conditions of business activity related to production and trade in explosives, weapons and ammunition, as well as products and technologies to be used for the military or police purposes (Journal of Law No 67, item 679, as amended);

3) a draft trade agreement;

4) a copy of the internal control program (ICP) certificate;

5) an import certificate or end user statement (in the case of export).

Article 10 of the Law says that before the application for an individual or global authorization is filed, the applicant (a natural or legal person) must in particular determine whether:

1) the end user intends to use military goods to violate or repress human rights and fundamental freedom;

2) the delivery of military goods constitutes any threat to peace or may otherwise cause destabilisation in the region;

3) the country of final destination supports, facilitates or encourages terrorism or international crime;

4) military goods may be used for any other purpose than to satisfy justified requirements of defence and security in the country of destination.

All these strict conditions and requirements contribute to preventing the proliferation of WMD and thus also prohibits any sensitive "non - state actors" to acquire items related to WMD from Polish exporters.